



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

48 CFR Parts 1536 and 1537

[EPA-HQ-OARM-2013-0370; FRL-9915-11-OARM]

Acquisition Regulation; Update to Construction and Architect-Engineer and Key Personnel Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the EPA Acquisition Regulation (EPAAR) to remove the evaluation of contracting performance and incorporate flexibility to identify the required number of days of key personnel commitment during the early stages of contractor performance under the Key Personnel clause. The proposed rule also provides for minor edits of an administrative nature.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-HQ-OARM-2013-0370, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: humphries.daniel@epa.gov
- Mail: **EPA-HQ-OARM-2013-0370**, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Please include a total of three (3) copies.
- Hand Delivery: EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave, NW, Washington, DC 20004. Such deliveries are only accepted

during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OARM-2013-0370**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket, and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either

electronically in www.regulations.gov, or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Humphries, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-4377; e-mail address: humphries.daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- Follow directions -The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

EPA is updating the EPAAR to remove section 1536.201 on the evaluation of contractor performance under construction contracts and the incorporation of flexibilities provided by a class deviation to the Key Personnel requirements under part 1537. Upon review of the EPAAR, it was determined that the EPAAR requirement for the evaluation of construction contracts should be removed as it was superseded by FAR 42.1502. Additionally, under EPAAR 1552.237-72, EPA proposes to provide contracting officers with the flexibility to identify the required number of days of key personnel commitment during the early stages of contractor performance. The length of time will be based on the requirements of individual acquisitions when continued assignment is essential to the successful implementation of the program's mission. Contracting officers may

include a different number of days in excess of the ninety (90) days included in the clause, if approved at one level above the Contracting Officer. And finally, the proposed rule provides minor administrative edits in the EPAAR sections identified.

III. Proposed Rule

This proposed rule includes the following content changes: 1) Removes 1536.201 Evaluation of contracting performance. 2) Provides administrative updates and adds Chief of the Contracting Office (CCO) to 1536.209(c). 3) Under 1536.521, updates the term “small purchases” with “simplified acquisition threshold.” 4) Under 1537.110(b) the term “contracting officer’s technical representative(s)” is replaced by “Contracting Officer’s Representative(s).” 5) Amends 1537.110(c) to incorporate the flexibilities provided by a class deviation to the Key Personnel requirements. 6) Remove “CFR 48” from 1537.110.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, “small entity” is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA

to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined

by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104-113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and

low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking does not involve human health or environmental effects.

List of Subjects in 48 CFR Parts 1536 and 1537

Environmental protection, Government procurement.

Dated: August 5, 2014.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for part 1536 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205 (c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

1536.201 [Removed]

2. Remove 536.201.

1536.209 [Amended]

3. Amend 1536.209, paragraph (c), by removing the acronyms “CCO” and “RAD” and adding, in their place, the words “Chief of the Contracting Office”.

4. Revise 1536.521 to read as follows:

1536.521 Specifications and drawings for construction.

The Contracting Officer shall insert the clause at 1552.236-70, Samples and Certificates, in solicitations and contracts when a fixed price construction contract is expected to exceed the simplified acquisition threshold. The clause may be inserted in solicitations and contracts when the contract is expected to be within the simplified acquisition threshold.

PART 1537—SERVICE CONTRACTING

5. The authority citation for part 1537 continues to read as follows:

Authority: Sec. 205 (c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

6. Amend 1537.110 by revising paragraphs (b) and (c) and, in paragraph (f), by removing the phrase “48 CFR” to read as follows:

1537.110 Solicitation provisions and contract clauses.

* * * * *

(b) The Contracting Officer shall insert a clause substantially the same as the clause in 1552.237-71, Technical Direction, in solicitations and contracts where the Contracting Officer intends to delegate authority to issue technical direction to the Contracting Officer's Representative(s).

(c) The Contracting Officer shall insert the clause at 1552.237-72, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor key personnel. Contracting Officers have the flexibility to identify the required number of days of key personnel commitment during the early stages of contractor performance. The length of time will be based on the requirements of individual acquisitions when continued assignment is essential to the successful implementation of the program's mission. Therefore, Contracting Officers may use a clause substantially the same as in EPAAR 1552.237-72, regarding substitution of key personnel. Contracting Officers may include a different number of days in excess of the ninety (90) days included in this clause, if approved at one level above the Contracting Officer.

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[FR Doc. 2014-19028 Filed 08/11/2014 at 8:45 am; Publication Date: 08/12/2014]